



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2018-0088]

RIN 1625-AA08

Special Local Regulation; Tred Avon River, between Bellevue, MD and Oxford, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations for certain waters of the Tred Avon River. This action is necessary to provide for the safety of life on these navigable waters located between Bellevue, MD, and Oxford, MD, during a swim event on June 9, 2018. If necessary, due to inclement weather, the event will be rescheduled to June 10, 2018. This action will prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander.

DATES: This rule is effective from 8:30 a.m. on June 9, 2018 through 11 a.m. on June 10, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0088 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On June 13, 2017, Charcot-Marie-Tooth Association of Trappe, MD, notified the Coast Guard that from 9:15 a.m. until 10:15 a.m. on June 9, 2018, and if necessary, due to inclement weather, from 9:15 a.m. until 10:15 a.m. on June 10, 2018, it will be conducting the swim portion of the Oxford Biathlon in the Tred Avon River that starts at Bellevue, MD and finishes at Oxford, MD. In response, on April 4, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulation; Tred Avon River, between Bellevue, MD and Oxford, MD" (83 FR 14381). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 4, 2018, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the date of the event, it would be impracticable and contrary to the public interest to make the regulation effective 30 days after publication in the **Federal Register**. The

regulation must be in place by June 9th in order to protect the public from the hazards associated with this swim event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the swim would be a safety concern for anyone intending to operate within certain waters of the Tred Avon River between Bellevue, MD, and Oxford, MD. The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on specified waters of the Tred Avon River before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published April 4, 2018. The comment addressed issues not related to this rulemaking. Therefore, there are no substantive changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation to be enforced from 8:30 a.m. until 11 a.m. on June 9, 2018, and if necessary, due to inclement weather, from 8:30 a.m. until 11 a.m. on June 10, 2018. The regulated area covers all navigable waters of the Tred Avon River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42'25" N, longitude 076°10'45" W, thence south to latitude 38°41'37" N, longitude 076°10'26" W, and bounded on the west by a line drawn from latitude 38°41'58" N, longitude 076°11'04" W, thence south to latitude 38°41'25" N,

longitude 076°10'49" W, thence east to latitude 38°41'25" N, longitude 076°10'30" W, located at Oxford, MD. The enforcement and duration of the regulated area is intended to ensure the safety of event participants and vessels within the specified navigable waters before, during, and after the 9:15 a.m. to 10:15 a.m. swim. Except for Oxford Biathlon participants, no vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or Coast Guard Patrol Commander.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Tred Avon River for 2-1/2 hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule will allow

vessels to request permission to enter the regulated area, and vessel traffic will be able to safely transit the regulated area once the Coast Guard Patrol Commander deems it safe to do so.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting 2-1/2 hours. It is categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Memorandum For Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05-1.

2. Add § 100.501T05-0088 to read as follows:

§ 100.501T05-0088 Special Local Regulation; Tred Avon River, between Bellevue, MD and Oxford, MD.

(a) Definitions—(1) Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

(2) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

(3) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) Participant means all persons and vessels registered with the event sponsor as participating in the Oxford Biathlon event or otherwise designated by event sponsor as having a function tied to the event.

(b) Location. The following location is a regulated area: All navigable waters of the Tred Avon River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42'25" N, longitude 076°10'45" W, thence south to latitude 38°41'37" N, longitude 076°10'26" W, and bounded on the west by a line drawn from latitude 38°41'58" N, longitude 076°11'04" W, thence south to latitude 38°41'25" N, longitude 076°10'49" W, thence east to latitude 38°41'25" N, longitude 076°10'30" W, located at Oxford, MD. All coordinates reference Datum NAD 1983.

(c) Special local regulations. (1) The COTP or Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(2) Except for participants and vessels already at berth, all persons and vessels within the regulated area at the time it is activated are to depart the regulated area.

(3) Persons and vessels desiring to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Coast Guard Patrol Commander. During the enforcement period, persons or vessel operators may request permission to transit, moor, or anchor within the regulated area from the Coast Guard Patrol Commander on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard Patrol Commander and official patrol vessels enforcing

this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz).

(4) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio.

(d) Enforcement officials. The Coast Guard may be assisted with the marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 8:30 a.m. until 11 a.m. on June 9, 2018, and if necessary, due to inclement weather, from 8:30 a.m. until 11 a.m. on June 10, 2018.

Dated: June 4, 2018

Joseph B. Loring
Captain, U.S. Coast Guard
Captain of the Port Maryland-National Capital Region.

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